

Circuit Court for Anne Arundel County
Case No. C-02-FM-20-001706

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 125

September Term, 2022

JEFFREY REICHERT

v.

SARAH HORNBECK

Beachley,
Shaw,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: September 12, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises out of an ongoing dispute between Sarah Hornbeck (“Mother”) and Jeffrey Reichert (“Father”) regarding the care and custody of the parties’ minor child (“G.”). In 2020, Mother filed a petition to modify a custody order that had been entered in the Circuit Court for Anne Arundel County the previous year. During those proceedings, the parties agreed to a *pendente lite* custody arrangement, which was entered as a *pendente lite* custody order by the court. Sometime later, Mother filed a motion to modify the *pendente lite* custody order. Following a hearing, the court granted Mother’s motion, and a new *pendente lite* custody order was entered that altered the parties’ custody arrangement pending resolution of Mother’s motion to modify custody. Father noted this interlocutory appeal, raising a single question¹:

Did the trial court err in modifying the *pendente lite* custody order?

For reasons to follow, we hold the trial court did not err. We, therefore, affirm.

BACKGROUND

Mother and Father were married in 2009 and G. was born to the parties that same year. The parties divorced in 2011. As part of the divorce, a custody order was entered in the Circuit Court for Baltimore City, where Mother lived.

¹ Father phrased the questions as:

Did the trial court err as a matter of law when it failed to find a material change in circumstances or to make findings as to the best interest of the child, and abuse its discretion when, at the end of the hearing, it ordered the child be taken from the courtroom by the mother with no contact by the father for 90 days?

Several years later, both parties filed motions to modify the custody order. In October 2019, the parties agreed to a consent order, which was entered in the Circuit Court for Baltimore City. According to the terms of the order, the parties were granted joint legal custody of G. Father was granted primary physical custody of G., and Mother was granted visitation every other weekend and for an extended period during the summer months and certain holidays.

In July 2020, Mother filed a petition to modify custody in the Circuit Court for Anne Arundel County, where Father lived. Mother alleged that Father had been consistently refusing to make G. available for scheduled visits. Mother also alleged that Father had been engaging in behavior that placed G.’s mental and physical safety at risk. Mother asked the court, among other things, to award her primary physical custody of G., both *pendente lite* and permanently.

In or around January 2021, Father and G. moved from Maryland to Virginia. At the time, G. was enrolled in school in Virginia and had been participating virtually. According to Mother, Father continued to deny her access to G.

Prior to the resolution of Mother’s petition to modify custody, in April 2021, the parties agreed to a *pendente lite* custody order. Mother was granted one week of additional visitation over the summer months. The parties agreed that, if Father failed to present G. for the scheduled weekend visitation with Mother, G.’s Best Interest Attorney (“BIA”) would have sole discretion to select an appropriate “make-up” weekend.

In May 2021, Mother filed a motion to modify the *pendente lite* custody order, alleging that Father continued to deny her access to G. Following a hearing, the circuit

court found Father had unjustifiably interfered with Mother’s access to G. and ordered Father to produce G. in court. Father failed to appear in court as ordered, and the court issued a body attachment, which was executed on August 5, 2021. On the same day, Father was brought to court and a hearing was held in which Father was given an opportunity to explain his failure to appear.

At the conclusion of the hearing, the circuit court found that Father had shown a consistent inability and unwillingness to abide by the court’s orders regarding Mother’s access to G. The court held Father in contempt and ordered that he be jailed until such time that G. is brought to court. One week later, Father satisfied the court’s purge provision and was released. In September 2021, Mother filed another motion to modify the *pendente lite* custody order. Father opposed the motion, and, in February 2022, the court conducted a two-day evidentiary hearing.

At the hearing, Mother testified, that prior to August 13, 2021, she had not visited with G. since the previous January and, since September 2, 2021, she had not visited with G. at all. Mother testified, when she initially agreed to the custody order in 2019, she hoped she and Father could maintain a shared custody arrangement, but, as time wore on, she found Father was not willing to facilitate her relationship with G. According to her, over the previous two years, Father had become angry and difficult and he “dragged [G.] into that negativity.”

In filing her motion, Mother testified, she was hoping the court would allow her to have ninety uninterrupted days of visitation with G. so she and G. could “reestablish [their] relationship.” Mother planned to take G. to Florida to spend time with her family, after

which she and G. would return to Maryland for the remainder of the ninety-day period. Mother stated that G. could continue his schooling virtually.

Father testified he made “numerous, numerous attempts” at facilitating visitation between Mother and G, since September 2, 2021. Father testified that G. was “scared” and “traumatized” about visiting with Mother and G. did not feel “safe” with Mother. Father maintained he had not made G. available for visitations because he wanted to avoid “trauma” for G.

Helen Laird, a custody evaluator with the circuit court, also testified. Ms. Laird was appointed custody evaluator by the circuit court in or around October 2020 and had been involved in the case since that time. Ms. Laird was called to testify about the status of her custody evaluation and her assessment of G.’s relationship with both Father and Mother. Ms. Laird testified that G. had “seen very little of his mother in the last two years” and Mother had “not had an opportunity to be an influence” on G. Ms. Laird explained that G.’s purported fear of Mother was not based on anything Mother had done but rather appeared to stem entirely from Father’s outward hostility toward Mother. Ms. Laird characterized Father and G.’s relationship as “unhealthy” and noted G. seemed to be “just parroting what his dad is saying” about Mother. Ms. Laird stated she had “serious concerns” for G’s long-term health and well-being under Father’s care.

Ms. Laird testified she believed G. needed to be in the care of Mother, and Mother would “take very good care of him.” Ms. Laird recommended Mother be given ninety days of uninterrupted access to G. without any contact from Father. While recognizing such a drastic change would be difficult for G., Ms. Laird insisted maintaining the status quo

would be even more detrimental to G. Ms. Laird explained, if something were not done “right now,” G. could suffer emotional and physical consequences.

At the conclusion of Ms. Laird’s testimony, the trial judge took a brief recess to conduct an in-camera interview with G. Also present during the interview was Terri Harger, another custody evaluator in the circuit court. At the conclusion of the interview, the trial judge went back on the record and discussed the interview.

The trial judge explained that, during the interview, she and G. discussed G’s current well-being, his relationship with Mother and Father, his perspective on the current custody situation and proceedings, and the prospects of him spending significant time with Mother. G. told the judge, when he turned ten years old, Father “told him everything about what was going on” and since that time, he did not want to spend any time with Mother. G. stated he was scared of Mother because of “things” she had done, but he did not provide specifics. G. also discussed recent developments in the custody case, which led the judge to conclude the Father had been relaying information about the case to G. The judge found G. appeared to have been “coached.”

The trial judge then asked Ms. Harger to provide her own synopsis of the interview with G. Ms. Harger noted that, although G. appeared to be scared of Mother, he was unable to provide concrete details regarding any incidents that would have caused him to be scared. Ms. Harger explained that G.’s fear of and animosity toward Mother seemed to have arisen out of G.’s conversations with Father. Ms. Harger noted that G. struggled with discerning the difference between “facts” and “distorted statements.” Ms. Harger

expressed concern that G. was “being coached.” Ms. Harger believed G. needed to see Mother “immediately.”

Modification of Pendente Lite Custody Order

At the conclusion of the hearing, the trial court ordered the parties’ *pendente lite* custody arrangement be modified pending a full hearing on the merits of Mother’s petition to modify custody. The court granted Mother sole physical and legal custody of G. until the merits hearing, which was scheduled for September 2022. The court also determined, effective immediately, G. would stay with Mother for ninety days without any contact from Father. The court found:

Now, I understand that spending ninety days away from Dad will be traumatic for [G.] and for Dad. But if not now, I don’t know when would be a better time. And ninety days is not an eternity, because Mom has not seen the child more than twice, really, for Christmas and Maine, in two years. And she won’t see him again, because Dad moved out of state and is simply not going to make him available.

I mean, I am concerned about [G.] not having contact with his father for that period of time, because I know they’re very codependent. But, on the other hand, I don’t think there can be any success moving forward, developing any kind of a relationship with Mother, and him - [G.] having any understanding that the - his parents handling this case because they’ve delegated it to the Court.

The Court makes the decisions and not [G.] I don’t think he will understand that if he’s in constant communication with Dad and continuing the same pattern that he has had.

I told [G.] that whatever happens today is only temporary. I told him that I had hoped that I would see the visitation pick up after Maine and that that would prove that things can go well. Of course, that didn’t happen. But I believe at this point in time it’s in [G.’s] best interest to have one opportunity to be alone with his mother and without his father for the ninety days they’ve proposed and get him into therapy and just try this one time to develop a relationship.

So I'm going to grant – modify the custody order, the [*pendente lite*] order to grant sole physical and legal custody to Mom between now and the merits hearing in September. We're going to have a review hearing in 90 days. During the period of the ninety days, [G.] is not to have any communication with his dad. It's his time with his mother.

The mother is to make sure he's getting in school and enrolled in whatever extracurricular activities he wishes and that he has his own therapist that he can see and hear and that the reunification therapy continues.

After making those findings, the trial court brought G. into the courtroom and informed him he would be going into Mother's care immediately and he would not be able to contact Father for ninety days. The court advised G. of the importance of him fostering a relationship with Mother and assured him that Father understood the decision and would be there for him following the ninety-day period. G. was noticeably upset by the court's decision and appeared to have difficulty in accepting the decision.

The court later entered an order reflecting its oral ruling. This timely interlocutory appeal followed.²

DISCUSSION

Parties' Contentions

Father argues the trial court erred in altering the parties' *pendente lite* custody arrangement. Father asserts the court failed to find a material change in circumstances before making its decision. Father also asserts the court did not engage in a proper analysis

² A party may appeal an interlocutory order that deprives a parent of the care and custody of a child or changes the terms of such an order. Md. Code, Cts. & Jud. Proc. § 12-303(3)(x).

of the requisite factors. Finally, Father contends the court abused its discretion in granting Mother full custody of G. for ninety days without any contact from Father. Father maintains the court’s decision was “cataclysmic to G.” and was “imposed upon him without any consideration of how [it] would affect him.”

Mother argues the trial court did not abuse its discretion in modifying the *pendente lite* custody order. Mother contends the court was not required to find a material change in circumstances before modifying the order. Mother further contends the court properly considered the requisite circumstances before granting her custody.

Standard of Review

Appellate review of a trial court’s decision regarding child custody involves three interrelated standards. *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021). First, any factual findings are reviewed for clear error. *Id.* Second, any legal conclusions are reviewed *de novo*. *Id.* Finally, if the court’s ultimate conclusion is “founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court’s] decision should be disturbed only if there has been a clear abuse of discretion.” *In re J.J.*, 231 Md. App. 304, 345 (2016) (citations and quotations omitted). “A decision will be reversed for an abuse of discretion only if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (citations and quotations omitted).

Analysis

In exercising its jurisdiction over the custody of a child, an equity court may make a *pendente lite* custody determination pending a final resolution of a custody dispute. Md.

Code, Fam. Law § 1-201(c). “A *pendente lite* order is not intended to have long-term effect and therefore focuses on the immediate, rather than on any long-range, interest of the child.” *Frase v. Barnhart*, 379 Md. 100, 111 (2003). Such an award “is subject to modification during the pendency of the action, as current circumstances warrant, and it does not bind the court when it comes to fashioning the ultimate judgment.” *Id.* Moreover, a *pendente lite* custody determination “is subject to review on the basis of a primary award, not as a modification.” *Leary v. Leary*, 97 Md. App. 26, 52-53 (1993) (*abrogated on other grounds by* 390 Md. 620). In other words, “when a *pendente lite* order for custody has been issued, it is not necessary to show a change of circumstances to modify that order as long as there has not been a final adjudication of the custody dispute.” *Kovacs v. Kovacs*, 98 Md. App. 289, 311-12 (1993). “The proper standard the court should use to determine a change of custody from a *pendente lite* order is and continues to be what is in the best interest of the child.” *Id.* at 312.

“There are numerous factors the court must consider and weigh in its custody determination.” *J.A.B.*, 250 Md. App. at 253 (citing *Montgomery Cnty Dept. of Social Services v. Sanders*, 38 Md. App. 406, 420 (1977)). Those factors include, but are not limited to: the parents’ fitness; the parties’ character and reputation; the parents’ desire; any agreements between the parties; the potential of maintaining natural family relations; the child’s preference; any material opportunities affecting the child’s future; the child’s age, health, and sex; the parents’ residence and the opportunity for visitation; the length of separation from the natural parents; and any prior voluntary abandonment or surrender. *Id.* When considering those factors, “the trial court should examine the totality of the situation

in the alternative environments and avoid focusing on or weighing any single factor to the exclusion of all others.” *Jose v. Jose*, 237 Md. App. 588, 600 (2018) (citations and quotations omitted).

In the end, “[t]he primary goal of access determinations in Maryland is to serve the best interests of the child.” *Conover v. Conover*, 450 Md. 51, 60 (2016). “The best interest of the child is [therefore] not considered as one of many factors, but as the objective to which virtually all other factors speak.” *E.N. v. T.R.*, 474 Md. 346, 397 (2021) (citations and quotations omitted). “In this regard, trial courts are endowed with great discretion in making decisions concerning the best interest of the child.” *Bussell v. Bussell*, 194 Md. App. 137, 157-58 (2010) (citing *Petrini v. Petrini*, 336 Md. 453, 469-70 (1994)). We review such decisions for abuse of discretion. *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020).

We hold the trial court in the present case did not abuse its discretion in modifying its *pendente lite* custody order in awarding Mother custody of G. We do not agree with Father that the court was required to find a material change in circumstances before making its decision. Such a finding is unnecessary when a court is altering a *pendente lite* custody order prior to a final adjudication of the primary custody dispute. *Kovacs*, 98 Md. App. at 311-12.

Furthermore, the record makes plain the trial court engaged in the requisite analysis and rendered an appropriate decision based on the circumstances of the case and G.’s best interests. The record shows, in making its decision, the court considered, among other things, Mother and Father’s actions with respect to their ability to properly parent G., their

motivations and desires to make appropriate decisions on G.'s behalf, and their ability and willingness to maintain G.'s relationship with the other parent. The court also considered G.'s current circumstances, opportunities, and preferences, his current relationship with both parents, and the amount of time he had spent with both parents in recent years.

In considering those and other factors, the court found G.'s interests were best served by rekindling his relationship with Mother, and the most effective way to achieve that end was to award Mother custody for ninety days, effective immediately, without any contact from Father during that time frame. The court noted Mother had seen G. only twice in the past two years, and if the current custody arrangement were to continue, it was clear Father was not going to make G. available to Mother. The court found that, although it had concerns about G. not having contact with Father for such a long period of time, the no-contact provision was necessary because Father and G. were codependent, G. needed to understand that the court made a decision that he was required to follow, and because it was important for G. to develop a relationship with his Mother. The court noted none of those issues would be resolved if G. and Father were allowed to communicate, given Father's history of influencing G. to his detriment and to the detriment of his relationship with Mother. The court further noted the change in custody was only temporary, and the court emphasized Mother was to ensure that G. was keeping up with his schoolwork, enrolled in extra-curricular activities, and engaged in individual and reunification therapy.

On this record, we hold the court did not err. The court's decision was based on sound legal principles and factual findings that were not clearly erroneous. The court's

decision also reflected a proper analysis of the relevant factors in light of G.’s best interests, and there is nothing in the record to suggest a clear abuse of discretion.

There can be little doubt the trial court’s decision to grant Mother custody for ninety days had, in the immediate, a deleterious effect on G., as evidenced by his emotional reaction upon learning of the court’s decision. Nevertheless, the record shows the court, in making its decision, understood the difficulties G. faced in transitioning to his Mother’s care. Indicated by the testimony of Ms. Laird and the proffers by the court and Ms. Harger following the in-camera interview with G., the court had serious and justifiable concerns about G.’s emotional well-being while in Father’s care. The court also recognized there was some urgency in alleviating the effects of G. and Father’s codependency and in facilitating G.’s relationship with Mother. We cannot say the court erred in determining those circumstances outweighed the immediate effects of separating G. and Father. Had the court not intervened and instead allowed G. to return to Father’s care, Father may have failed to produce G. for visitations with Mother, thus requiring further court intervention, alienation, and negative feelings.

Father argues the trial court erred because it did not make an express, on-the-record finding for each of the aforementioned factors. We disagree. Although the record does not reflect that the court made an express finding as to each factor, the record does show the court sufficiently considered and weighed all the relevant factors before making its decision. *See J.A.B.*, 250 Md. App. at 253 (“It is undisputed that there are numerous factors the court must *consider and weigh* in its custody determination.”) (emphasis added).

Father also argues the “errors” made by the trial court in this case were akin to those found in *Flynn v. May*, 157 Md. App. 389 (2004) and *Van Schaik v. Van Schaik*, 90 Md. App. 725 (1992). However, those cases are inapposite. In *Flynn*, we held that the trial court erred in ordering a change in custody without an evidentiary hearing after one of the parties failed to file a responsive pleading to the other party’s complaint. *Flynn*, 157 Md. App. at 410-12. In the present case, by contrast, the court held a two-day evidentiary hearing before making its decision. In *Van Schaik*, we held the trial court erred in ordering a change in custody where neither party was notified that the court had intended to make such a decision, neither party had asked for the court to make such a decision, neither party was represented by counsel, and neither party was aware that a custody decision was going to be made until the end of the hearing. *Van Schaik*, 90 Md. App. at 738-39. Here, both parties were aware of the hearing and its implications, both parties were present at the hearing and represented by counsel, both parties presented testimony and evidence, and both parties knew that the court would be making a custody determination at the conclusion of the hearing.

In sum, we hold the trial court did not err in altering the parties’ *pendente lite* custody order. The court’s decision was legally correct, and it was not an abuse of discretion.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**